



**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

BRIAN KAMEDULÁ,

Plaintiff,

vs.

ROBERT BANNISTER, *et al.*,

Defendants.

Case No. 3:10-cv-00160-ECR-RAM

**ORDER**

Before the Court are Defendants' Petition for Removal (Docket #1), Plaintiff's Pro Se Civil Rights Complaint (Docket #1, Exhibit A), Defendants' Statement of Removal (Docket #3), Plaintiff's Motion for Leave to Address and to Add Defendants true names (docket #6), Plaintiff's Motions for Summary Judgment (docket #10 and #13) and his Motion for Declaratory Judgment (docket #17).

**I. Removal of this Action was Proper**

Plaintiff, an inmate at Nevada State Prison, filed a *pro se* civil rights complaint on January 21, 2010, in the First Judicial District Court of the State of Nevada in the City and County of Carson City. Defendants Robert Bannister, Sheila Barth, Robert Crum, William Donnelly, Terri Jacobs, David Mar, Howard Skolnik, Wayne Smith and Sandra Snider were served on or about February 18, 2010. Defendants filed a Notice of Removal in this Court on March 22, 2010 (Docket #1). "The district courts shall have original jurisdiction of all civil actions under the Constitution, laws, or treaties of the United States." 28 U.S.C. § 1331. Plaintiff has alleged a violation of his rights under the U.S. Constitution. Defendants appropriately removed the action to this Court pursuant to 28 U.S.C. § 1441,

1 as this Court has original jurisdiction over the claims raised in the complaint.

## 2 **II. Screening of the Complaint**

3 The complaint must be screened pursuant to 28 U.S.C. §1915A. Federal courts must  
4 conduct a preliminary screening in any case in which a prisoner seeks redress from a governmental entity  
5 or officer or employee of a governmental entity. See 28 U.S.C. § 1915A(a). In its review, the court must  
6 identify any cognizable claims and dismiss any claims that are frivolous, malicious, fail to state a claim  
7 upon which relief may be granted or seek monetary relief from a defendant who is immune from such  
8 relief. 28 U.S.C. § 1915A(b)(1),(2). Pro se pleadings, however, must be liberally construed. *Balistreri*  
9 *v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9<sup>th</sup> Cir.1988). To state a claim under 42 U.S.C. § 1983, a  
10 plaintiff must allege two essential elements: (1) that a right secured by the Constitution or laws of the  
11 United States was violated, and (2) that the alleged violation was committed by a person acting under  
12 the color of state law. See *West v. Atkins*, 487 U.S. 42, 48 (1988).

13 In addition to the screening requirements under § 1915A, a federal court must dismiss  
14 a prisoner's claims, "if the allegation of poverty is untrue," or if the action "is frivolous or malicious,"  
15 "fails to state a claim on which relief may be granted," or "seeks monetary relief against a defendant who  
16 is immune from such relief." 28 U.S.C. § 1915(e)(2); 42 U.S.C. § 1997e(c)(1), (2). Dismissal of a  
17 complaint for failure to state a claim upon which relief may be granted is provided for in Federal Rule  
18 of Civil Procedure 12(b)(6), and the Court applies the same standard when reviewing the adequacy of  
19 a complaint or amended complaint.

20 Review under Rule 12(b)(6) is essentially a ruling on a question of law. See *Chappel v.*  
21 *Laboratory Corp. of America*, 232 F.3d 719, 723 (9<sup>th</sup> Cir. 2000). Dismissal for failure to state a claim  
22 is proper only if it is clear that the plaintiff cannot prove any set of facts in support of the claim that  
23 would entitle him or her to relief. See *Morley v. Walker*, 175 F.3d 756, 759 (9<sup>th</sup> Cir. 1999). In making  
24 this determination, the Court takes as true all allegations of material fact stated in the complaint, and the  
25 Court construes them in the light most favorable to the plaintiff. See *Warshaw v. Xoma Corp.*, 74 F.3d  
26

1 955, 957 (9th Cir. 1996). Allegations in a *pro se* complaint are held to less stringent standards than  
2 formal pleadings drafted by lawyers. *See Hughes v. Rowe*, 449 U.S. 5, 9 (1980); *Haines v. Kerner*, 404  
3 U.S. 519, 520-21 (1972) (*per curiam*).

4 Plaintiff raises claims for denial of proper dental and medical care starting in 1987 and  
5 continuing to the present. Specifically, plaintiff alleges he suffers from numerous severe dental issues  
6 including dental caries, unfitted or missing dental retainers and dentures resulting in pain, misalignment  
7 of teeth and tooth loss. Plaintiff further alleges he has developed and is suffering from various medical  
8 concerns including painful and bleeding hemorrhoids, lumps or cysts on his eye-lid, nose, legs and chest,  
9 neck and shoulder pain, headaches, nausea, and blurred vision.

10 Plaintiff asserts that he has notified the numerous defendants either through kites,  
11 grievances, personal interviews and medical examination, but that no treatment has been provided. With  
12 the exception of defendant Howard Skolnik, the Director of the Nevada Department of Corrections,  
13 plaintiff has stated a claim against all named defendants. Mr. Skolnik shall be dismissed as plaintiff  
14 offers no facts which show that he has personal knowledge of plaintiff's dental and medical needs and  
15 thereafter failed to take any action to address them. The other defendants are properly identified and tied  
16 to the claims by their direct knowledge and they alleged failure to act.

#### 17 Pending Motions

18 Plaintiff's motion seeking the in camera release of a defendant's address and seeking to  
19 amend the complaint to identify previously unidentified defendants (docket #6) shall be denied in part  
20 and granted in part. The complaint shall be amended to incorporate the identities of the does defendants  
21 set forth therein. Plaintiff has also filed two motions for summary judgment and a motion for declaratory  
22 judgment while the matter has been awaiting screening. Because the matter could not proceed until the  
23 court reviewed its sufficiency, the motions are premature and shall be denied without prejudice.

#### 24 **III. Conclusion**

25 Defendant Skolnik shall be dismissed from the action. Plaintiff shall be permitted to  
26

1 amend his complaint to identify the doe defendants' true names. The motions for summary judgment  
2 and for declaratory judgment shall be denied without prejudice

3 **IT IS THEREFORE ORDERED** that the Clerk of the Court shall **FILE** the complaint

4 **IT IS FURTHER ORDERED** that the motion seeking Dr. Snider's address and seeking  
5 to amend the complaint to identify Does defendants (docket #6) is **denied without prejudice as to**  
6 **release of the defendant's address and granted in part as to identifying the Doe defendants.**

7 Plaintiff shall have twenty days to file and serve an amended complaint incorporating the true identities  
8 of the doe defendants. The Amended Complaint should not identify Howard Skolnik as a defendant.

9 **IT IS FURTHER ORDERED** that the motions for summary judgment (docket #10 and  
10 #13) are **denied without prejudice.** The motion for declaratory judgment (docket #17) is **denied**  
11 **without prejudice.**

12 **IT IS FURTHER ORDERED** that Defendant Howard Skolnik is **DISMISSED.**

13 **IT IS FURTHER ORDERED** as follows:

14 1. The Clerk shall electronically serve a copy of this order, including the attached  
15 **Notice of Intent to Proceed with Mediation form on defendants.**

16 2. Defendants shall file and serve an answer or other response to the complaint within  
17 **thirty (30) days** following the date of the early inmate mediation. If the court declines to mediate this  
18 case, an answer or other response shall be due within **thirty (30) days** following the order declining  
19 mediation.

20 5. The parties **SHALL DETACH, COMPLETE AND FILE** the attached Notice of  
21 Intent to Proceed with Mediation form on or before **thirty (30) days** from the date of entry of this order.

22 DATED: *October 25, 2010.*

23   
24

25 **UNITED STATES DISTRICT JUDGE**  
26

1 \_\_\_\_\_  
Name

2 \_\_\_\_\_  
Prison Number (if applicable)

3 \_\_\_\_\_  
Address

4 \_\_\_\_\_

5 \_\_\_\_\_

6  
7 UNITED STATES DISTRICT COURT  
8 DISTRICT OF NEVADA  
9

10 \_\_\_\_\_, )  
Plaintiff, )

11 v. )

12 \_\_\_\_\_ )

13 \_\_\_\_\_ )  
14 Defendants. )

Case No. \_\_\_\_\_

NOTICE OF INTENT TO  
PROCEED WITH MEDIATION

15 This case may be referred to the District of Nevada's early inmate mediation program. The  
16 purpose of this notice is to assess the suitability of this case for mediation. Mediation is a process by  
17 which the parties meet with an impartial court-appointed mediator in an effort to bring about an  
expedient resolution that is satisfactory to all parties.

18 1. Do you wish to proceed to early mediation in this case? \_\_\_\_ Yes \_\_\_\_ No

19 2. If no, please state the reason(s) you do not wish to proceed with mediation? \_\_\_\_\_

20 \_\_\_\_\_

21 \_\_\_\_\_

22 \_\_\_\_\_

23 3. List any and all cases, including the case number, that plaintiff has filed in federal or state court  
24 in the last five years and the nature of each case. (Attach additional pages if needed).

25 \_\_\_\_\_

26

1 \_\_\_\_\_  
2 \_\_\_\_\_  
3 4. List any and all cases, including the case number, that are currently pending or any pending  
4 grievances concerning issues or claims raised in this case. (Attach additional pages if needed).  
5 \_\_\_\_\_  
6 \_\_\_\_\_  
7 \_\_\_\_\_

8 5. Are there any other comments you would like to express to the court about whether this case is  
9 suitable for mediation. You may include a brief statement as to why you believe this case is suitable for  
10 mediation. (Attach additional pages if needed).  
11 \_\_\_\_\_  
12 \_\_\_\_\_  
13 \_\_\_\_\_

14 This form shall be filed with the Clerk of the Court on or before thirty (30) days from the date  
15 of entry of this order.

16 Counsel for defendants: By signing this form you are certifying to the court that you have  
17 consulted with a representative of the Nevada Department of Corrections concerning participation in  
18 mediation.

19 Dated this \_\_\_\_ day of \_\_\_\_\_, 2010.

20 \_\_\_\_\_  
21 Signature

22 \_\_\_\_\_  
23 Name of person who prepared or  
24 helped prepare this document  
25  
26